

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x **MEMORANDUM AND ORDER**
ABDUL RAHIM HOWARD, Case No. 11-CV-5208 (FB)

Petitioner,
-against-

UNITED STATES OF AMERICA,

Respondent.
-----x

Appearances:

For the Petitioner:

ABDUL RAHIM HOWARD, *pro se*
#72346-053
Metropolitan Detention Center
P.O. Box 329002
Brooklyn, NY 11232

For the Respondent:

LORETTA LYNCH, ESQ.
United States Attorney
Eastern District of New York
BY: JOHN DAVID BURETTA, ESQ.
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Assistant United States Attorneys
271 Cadman Plaza East
Brooklyn, NY 11201

BLOCK, Senior District Judge:

Petitioner Abdul Rahim Howard ("Howard") seeks reconsideration of the Court's August 16, 2012 denial of his second motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. The Court previously denied Howard's first § 2255 petition in its entirety, as well as Howard's subsequent motion for reconsideration.

Howard advances three grounds for reconsideration of the denial of his latest § 2255 petition. First, he claims that the Court misconstrued his argument that the sentencing court failed to follow the procedures set forth in 21 U.S.C. § 851(b), which requires that prior to imposition of a sentence, a defendant be asked to affirm or deny whether he has been previously convicted as set forth in the information. Second, Howard states that the Court

misunderstood his argument that the government was “vindictive” in filing a superseding indictment shortly before trial with five additional counts. Finally, Howard contends that the Court erred in misconstruing his argument that the Count Four conviction, for distribution of narcotics near a playground, could not stand as § 841(b) does not call for aggregation of drug quantities in substantive counts.

On reconsideration, Howard has failed to “show that any controlling authority or facts have actually been overlooked . . . and which, had they been considered, might have reasonably altered the result before the court.” *See Thaler v. United States*, 706 F. Supp. 2d 361, 374 (S.D.N.Y. 2010) (citations omitted) (providing the standard for a Rule 59(e) motion to alter or amend the judgment). Instead, he seeks to reargue claims that were previously made to and rejected by this Court. Accordingly, the Court denies Howard’s motion for reconsideration.

SO ORDERED.

FREDERIC BLOCK

Senior United States District Judge

Brooklyn, New York
December 13, 2012